SUPREME COURT OF THE

October Term 1956

No. 271

JOSE MATOS

v.

ALONSO BROTHERS, ET AL.

PETITION OF RESPONDENTS FOR

Supreme Court of the United States

October Term 1936
No. 227

JOSE MATOS
Petitioner,

vs.

ALONSO BROTHERS, ET. AL.,
Respondents.

PETITION OF RESPONDENTS FOR REHEARING

Francis H. Dexter,
Counsel of Respondents.

In the Supreme Court of the United States

OCTOBER TERM, 1936.

No. 227

JOSE MATOS

Petitioner,

vs.

ALONSO BROTHERS, ET. AL.,

Respondents.

PETITION OF RESPONDENTS FOR A REHEARING.

Respondents, by their undersigned counsel pray for a rehearing of the decision and judgment in the above entitled cause rendered, March 29, 1937, and for grounds of this petition they respectfully submit as follows:

The decision of the Court, omitting the part which narrates the proceedings in the lower courts, disposed of the case in the following terms:

> "Two sections of the Revised Civil Code of Puerto Rico follow.
>
> 1397. Animals and cattle suffering from contagious diseases shall not be the object of a contract of sale. Any contract made with regard to the same shall be void. A contract of sale of cattle and animals shall also be void, when the use or service for which they are acquired being stated, they are found to be useless therefor.
>
> 1399. The redhibitory action, based on the vices or defects of animals, must be instituted within forty days, counted from their delivery to the vendee, unless,

by reason of the customs in each locality, longer or shorter periods are established. This action in the sale of animals may only be enforced with regard to the vices and defects of the same, determined by law or by local customs.

Several sections of the Island's Penal Code interdict sale or possession of animals suffering from a contagious disease..."

.....

"The matter is here by certiorari. Manifestly the solution of the controversy must turn upon the meaning and effect of the above quoted sections of the Civil Code—local law of Puerto Rico—.

Considering the argument here, the divergent views below, the authorities cited, and "recognizing the deference due to the understanding of local courts upon matters of purely local concern", it becomes impossible for us to entertain "a sense of clear error committed" by the Supreme Court. Following the view so often approved, we think the Circuit Court of Appeals should have accepted and affirmed the ruling there announced after much consideration.

(Nadal Vs. May, 233 U. S. 447,454; De Villanueva Vs. Villanueva, 239 U. S. 293,299; Diaz, et al. Vs. Gonzalez, et. al., 261 U. S. 102,105.

The judgment of the Circuit Court of Appeals must be reversed; the judgment of the Supreme Court is affirmed."

I

THE DECISION OF THE SUPREME COURT OF PUERTO RICO IN THE PRESENT CASE DOES NOT REPRESENT THE SETTLED LAW OR DECISIONS IN PUERTO RICO ON THE POINT IN QUESTION.

The only other decision of that Court on the point in question is directly in conflict with the decision in the present case and the former decision supports the absolute illegality of the contract in question and its freedom from the redhibitory prescription.

The case of Booth Packing Co. v. Sobrino Brothers, 34 P. R. R. 14, decided, March 6, 1935, decision by Justice Woolf, based its decision on Section 1238 of the Revised Civil Code of Puerto Rico and on Article 342 of the Code of Commerce.

Section 1238 of the Civil Code, provides as follows:

> "All things, even future ones, which are not out of the commerce of man, may be objects of contracts...."

Article 342 of the Code of Commerce in force at that time provided as follows:

> "A purchaser who has not made any claim based on the inherent defects in the article sold, within thirty days following its delivery, shall lose all rights of action against the vendor for such defects."

The Court held that this redhibitory prescription only could have effect in reference to a valid contract and that as the contract in question was absolutely null and void because lacking a licit "object" it was without consideration and therefore the redhibitory prescription did not apply.

This was a suit to recover the purchase price of a consignment of canned fruits.

The Supreme Court sustained the objection of the defendant purchaser to the claim of the plaintif vendor of the redhibitory prescription of 30 days as against the defense of defendant purchaser that a great part of the consignment of canned fruits had turned out after delivery to be spoiled, and held inapplicable the case of Schluter vs. Fernandez, 30 P. R. R. 117, which was relied upon in that case and which is cited by the petitioner in this case as the only case in the Supreme Court in Puerto Rico to defeat the present action.

The prescription of 30 days provided in the Article of the Code of Commerce, above cited, is in correlation with that of the civil law relating to redhibitory contracts and

actions, as provided in Section 1399, Revised Civil Code 1902.

This appears from the decision of the Supreme Court in the present case (bottom of Page 34 Transcript) where the court quotes the Spanish Juridical Encyclopedia relating to the civil law on the subject of redhibition:

> "Our private law has substantially adopted the redhibitory action when authorizing the rescission of contracts of sale by reason of defects in the things sold, under the general civil law, as well as under the special commercial law, etc."

No "rule of property" or action with reference to the interpretation of Section 1397 of the Revised Civil Code has been established in Puerto Rico.

PREVIOUS DECISIONS OF THIS COURT APPLICABLE TO THE POINT UNDER CONSIDERATION.

In the case of Edward Hines Trustees Vs. Martin, 268 U. S. 458, in a unanimous decision of this Court, expressed thru Justice Stone, the Court declared:

> (Page 463) "When questions affected by the interpretation of a state statute or a local rule of property arise in a Federal Court, that court has the same authority and duty to decide them as it has to decide any other questions which arise in a cause; and where state decisions are in conflict, or do not clearly establish what the local law is, the Federal court may exercise an independent judgment and determine the law of the case. See Pease Vs. Peck, 18 Howard, 595,598; Burgess Vs. Seligman, 107 U. S. 20; Barber Vs. Pittsburg Railway Co., 166 U. S. 83,89; Kuhn Vs. Fairmont Coal Co., 215 U. S. 349.
>
> This Court has refused to follow a..... single decision when not satisfied that it is conclusive evidence of the State law, Barber Vs. Pittsburg Railway Co. 166 U. S. 83,89."

In Risty v. Chicago, Rock Island & Pacific Railway Co., 270 U. S. 378, the court in a unanimous decision expressed thru Justice Stone declared:

> "It is the duty of Federal courts, in suits brought in or removed to the district courts, to decide for themselves all relevant questions of state law, including the meaning of state statutes *where they have not been clearly and decisively passed upon the State court.* (Italics are ours).

In Concordia Insurance Co. Vs. School District, 282 U. S. 545, the Court in a unanimous decision expresed thru Justice Sutherland declared:

> "A Federal court is free to construe a state statute where the decisions of the highest courts of the State are in conflict or where there is no authoritative decision in conflict with the general law."

In Stanley County Vs. Coler, 190 U. S. 437, the Court in a unanimous decision declared:

> "While as a general rule Federal courts will accept the interpretation put by the courts of a State upon its own constitution or statutes, yet where the law has not been definitely settled, it is the right and the duty of Federal courts to exercise their own judgement."

In Kuhn Vs. Fairmont Coal Co., 215 U. S. 349 it is decided:

> "Rules or law relating to real estate, so established by State decisions rendered before the rights of the parties accrued, as to have become rules of property and action, are accepted by the Federal courts; but where the law has not thus been settled it is the right and the duty of the Federal Court to exercise its own judgement, as it always does in cases depending on doctrines of commercial law and general jurisprudence."

II

SECTION 128 OF THE JUDICIAL CODE, AS AMENDED FEBRUARY 13 1925, (SECTION 225, TITLE 28, UNITED STATES CODE) GIVES TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT APPELLATE JURISDICTION TO REVIEW FINAL DECISIONS OF THE SUPREME COURT OF PUERTO RICO IN CIVIL CASES:—

"FOURTH,.....IN ALL OTHER CIVIL CASES (OTHER THAN THOSE INVOLVING FEDERAL QUESTIONS) WHEREIN THE VALUE IN CONTROVERSY, EXCLUSIVE OF INTEREST AND COSTS EXCEEDS $5000."

In adopting the foregoing provision the Congress was aware of the previous decisions of this Court applying the doctrine of "local decisions" to the judgments and decisions of the Supreme Court of Puerto Rico.

Instead of recognizing and adopting this doctrine the Congress established a different rule, as it had the power to do with reference to the judgments and decisions of the Supreme Court of Puerto Rico, a possession or dependency under the sovereignty and control of the National government, it provided a *review* "in all civil cases" wherein the value in controversy exceeds $5,000.

This law applies not only to the United States Circuit Court of Appeals for the First Circuit as to the full and complete scope of its review but also to this Court in cases from the former entertained upon certiorari.

If this were not the intention and effect of the law the appellate jurisdiction of the United States Circuit Court of Appeals to review the decisions and judgments of the Supreme Court of Puerto Rico in civil cases would be futile and empty.

The same intention and effect do not follow from the provision contained in clause First of the section relating to appeals from the district courts of the United States.

"All cases" in this clause refer to the limited class of cases over which the district courts have jurisdiction,

original or by removal. Congress could not, with due regard to the comity existing between the federal courts and the highest courts of the States, if not to the Constitution, apply the same rule of review to the latter on local questions which it has the undoubted power to do with reference to the courts of a possession or dependency.

This question is not affected by the power which Congress may or may not have to authorize a complete and full review of the judgments and decisions of the Supreme Court of the organized Territory of Hawaii.

III

THE INTERPRETATION OF SECTION 1397 OF THE REVISED CIVIL CODE OF PUERTO RICO OF 1902 AND OF THE PROVISIONS OF THE PENAL CODE AND OF THE REVISED STATUTES MAKING ILLEGAL CONTRACTS FOR THE SALE OF CATTLE SUFFERING FROM CONTAGIOUS DISEASES ADOPTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO AFTER THE ISLAND HAD PASSED AS A POSSESSION OR DEPENDENCY OF THE UNITED STATES UNDER ITS SOVEREIGNTY AND CONTROL INVOLVES A QUESTION OF THE GENERAL PUBLIC POLICY OF PUERTO RICO WITH REFERENCE TO SUCH LEGISLATION—WHICH PUBLIC POLICY IS THE SAME AS THAT OF THE NATIONAL GOVERNMENT AND WHICH WAS ADOPTED BY THE LEGISLATIVE ASSEMBLY—THUS BEING A QUESTION OF GENERAL LAW.

The interpretation of Section 1397 of the Revised Civil Code and of the provisions of the Penal Code and of the Revised Statues above referred to should not be considered to be a question of local law in which the National government and the Federal appellate courts with jurisdiction have no legal interest or responsibility.

This section and the other provisions above referred to were adopted by the Legislative Assembly of Puerto Rico under the standards of interpretation prescribed in the

"Preliminary Title" of the Revised Civil Code of 1902 which adopted the standards of interpretation which are a part of the jurisprudence of the United States, and under the influence of the public policy of the Nation.

See Respondent's Brief submitted on Hearing and Argument, pages 13 and 14, and section 11 of the Civil Code of 1902, cited at bottom of page 24 of the brief.

The interpretation of Section 1399 of the Revised Civil Code relating to redhibitory prescription is not in question. It is conceded that this section establishes the redhibitory prescription applicable to rescissory contracts. This rescissory prescription can not be applied to the contracts and actions embraced within Section 1397 upon giving it the effect demanded by the plain provisions of the Section, towit:—the illegal contract is prohibited in the interest of public health and public welfare.

We respectfully suggest that the present case should be governed by the doctrine established by the unanimous decision of the Court, expressed thru Chief Justice Taft in the case of Yu Cong Eng, et al. Vs. Trinidad, Collector, 271 U. S. 500. That case decided:

> 5. The duty of a court to construe an act of legislation in harmony with the fundamental law, does not authorize the court to depart from the plain terms and intention of statutes, and thus in effect to make a new law.
>
> 8. On a question of the construction of the Phillippine Code of Procedure adopted by the United States Philippine Commission, the Court in reviewing the decision of the Supreme Court of the Philippines may exercise its independent judgment.
>
> 9. The application of American constitutional limitations to a Philippine statute dealing with the rights of persons living under the government established there by the United States, is not a local one.....

10. The limitations in the Philippine Bill of Rights are to be enforced in the light of the construction by this Court of such limitations as recognized by it since the foundation of our government.

In its opinion, Page 522 the Court declared:

"The suggestion has been made in argument that we should accept the construction put upon a statute of the Philippine Islands by their Supreme Court as we would the construction of a state court in passing upon the federal constitutionality of a state statute. The Philippines are within the exclusive jurisdiction of the United States Government, with complete power of legislation in Congress over them, and when the interpretation of a Philippine statute comes before us for review, we may if there be need therefor re-examine it for ourselves as the court of last resort on such a question. It is very true that with respect to questions turning on questions of local law, or those properly affected by custom inherited from the centuries of Spanish control, we defer much to the judgment of the Philippine or Porto Rican courts. Cami v. Central Victoria Ltd., 268 U. S. 469; Diaz v. Gonzalez, 261 U. S. 102. But on questions of statutory construction, as of the Philippine Code of Procedure adopted by the United States Philippine Commission, this Court may exercise an independent judgment. In Philippine Sugar Co. v. Philippine Islands, 247 U. S. 385, involving the effect of Section 285 of that Code, the court said, at Page 390: "It is also urged that, since the construction of Section 285 is a matter of purely local concern, we should not disturb the decision of the Supreme Court of the Philippine Islands. This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. Phoenix R. Co. Vs. Landis, 231 U. S. 578. But that disposition may not be yielded to where the lower court has clearly erred. Carrington v. United States, 208 U. S. 1."

The question of applying American constitutional limitations to a Philippine or Porto Rican statute dealing with the rights of persons living under the government established by the United States, is not a local one....."

The case of Philippine Sugar Co. v. Philippine Islands, 247 U. S. 385 above cited was a unanimous decision expressed by Justice Brandeis.

In the opinion of Chief Justice Taft in the case above cited the court decided:

"The fundamental law we administer in the Philippine bill of rights was a marked change from that which prevailed in the Islands before we took them over and is to be enforced in the light of the construction by this court of such limitations as it has recognized them since the foundation of our own government."

The fundamental law in force in Puerto Rico includes the public policy of the United States. The public policy of Puerto Rico and its laws are subject to and interpreted by the public policy of the United States.

Swift v. Tyson, 16 Peters 1.

"The 34th Section of the Judiciary Act of 1789, which declares "That the laws of the several states, except where the Constitution, treaties, or statutes of the United States, shall otherwise recognize or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply", has uniformly been supposed by the Supreme Court to be limited in its application to State laws strictly local; that is to say, to the positive statutes of the State, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character.

The section does not extend to contracts or other instruments of a commercial nature, the true interpretation and effect thereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines or commercial jurisprudence."

In the case of the Baltimore and Ohio Railroad Co. vs. Baugh, 149 U. S. 368, the court in its opinion in referring to the case of Swift v. Tyson, declared:

(Page 372) "Notwithstanding the interpretation placed by this decision upon the thirty-fourth section of the Judiciary Act of 1789, Congress has never amended that section; so it must be taken as clear that the construction thus placed is the true construction, and acceptable to the legislative as well as to the judicial branch of the government. Forty years thereafter, in Burgess v. Selingman, 107 U. S. 20, the matter was again fully considered, and it was said by Mr. Justice Bradley, on pages 33, and 34, that "the Federal courts have an independent jurisdiction in the administration of state laws, co-ordinate with and not subordinate to, that of the state courts, and are bound to exercise their own judgment as to the meaning and effect of those laws.... but where the law has not been thus settled it is the right and duty of the Federal courts to exercise their own judgment, as they always do in reference to the doctrines of commercial law and general jurisprudence..... As, however, the very object of giving to the national courts jurisdiction to administer the laws of the states in controversies between citizens of diferent states was to institute independent tribunals, which it might be supposed would be unaffected by local prejudices and sectional views, it would be a dereliction of their duty not to exercise an independent judgment in cases not foreclosed by previous adjudication."

(Page 373) "Whatever differences of opinion may have been expressed, have not been on the question whether a matter of general law should be settled by

the independent judgment of this court, rather than upon an adherence to the decision of the State courts, but upon the other question, whether a given matter is one of local or of general law."

The public policy, or "institutional law" of the United States is as much a part of our national system as is the Constitution.

"No contract can be enforced in the courts of the United States, no matter where made or where to be executed, if in contravention of the government." Kenneth v. Chambers, 14 Howard 38.

"Contracts permissible by other countries are not enforceable in our courts if they contravene our policy". Oscanyan Vs. Arms Co. 103 U. S. 261,277.

"It is a rule of the common law of universal application, that where a contract express or implied is as to the consideration or the thing to be done contrary to sound policy or good morals, no alleged right founded upon it can be enforced in a court of Justice." Trist Vs. Child, 21 Wallace, 441-448.

The reason upon which rest the numerous decisions of this court which have established the doctrines of "local decisions" has grown out of and is based upon cases coming to this court from the highest courts of the States, and such decisions are a necessary deference to the respective State sovereignties. No such reason exists with reference to decisions of the Supreme Court of Puerto Rico.

Puerto Rico is a possession or dependency of the National Government, which has control over it and the responsibility for its public policy, public health and public welfare of the Island and of its inhabitants.

The three branches of the National Government have the responsibility within their respective spheres of solving the problems which this paramount sovereignty involves. A precedent set at this time may have far reaching

consequences in the near future in connection with the orderly administration of the law and the determination of the public policy of the Island.

Considering Section 1397 of the Revised Civil Code in connection of the provision of the Penal Code and of the Revised Statutes adopted by the Legislative Assembly of Puerto Rico in regard thereto, we respectfully pray the Court to consider the question in the light of National public policy, which in its institutional sense, controls all legislation and jurisprudence in Puerto Rico relating to public health, public welfare and public order.

Respondents urgently pray the Court to reconsider their briefs hereinbefore presented, and to exercise the power that it has to determine by its independent judgment, free from an extreme liberal policy of comity and deference to the Supreme Court of Puerto Rico, and upon such consideration, if the question appears to be one of general law, to decide the case upon its merits.

Respectfully submitted.

San Juan, Puerto Rico, April 1937.

Francis H. Dexter,
Counsel for Respondents.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

Francis H. Dexter,
Counsel for Respondents.

I hereby state that on the 15th day of April, 1937, I deposited in the General Post Office at San Juan, P. R., a copy of the foregoing Petition for Rehearing, duly addressed to Oscar B. Frazer, Esq. 120 Broadway, New York, his usual and known address, he being the Counsel for Petitioner, the necessary postage having been attached to said communication.

San Juan, P. R., April 15th 1937.

Francis H. Dexter,
Counsel for Respondents.